

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CHEN CHONG SHU,)	
)	
Plaintiff,)	
)	Civil Action No. 03-409E
v.)	
)	Judge McLaughlin
UNITED STATES OF AMERICA,)	Magistrate Judge Baxter
)	
Defendant.)	

AMENDED MOTION FOR LEAVE TO DEPOSE PLAINTIFF

AND NOW comes Defendant, United States of America, by and through its attorneys, and respectfully seeks leave from the Court to depose Plaintiff, Chen Chong Shu ("Plaintiff"), stating as follows:

1. Pursuant to Rule 30(a)(2) of the Federal Rules of Civil Procedure, Defendant hereby makes an application to the Court for leave to take the deposition of Plaintiff, who is presently confined at FCI McKean, in Bradford, Pennsylvania. Mr. Shu is the Plaintiff in this case who has filed a personal injury lawsuit against Defendant.

2. On June 30, 2005, Defendant previously filed a Motion for Leave to Depose Plaintiff. This Court granted the Motion for Leave to Depose on July 6, 2005, and Plaintiff's deposition was scheduled to take place on September 14, 2005, at FCI McKean. Counsel for the Defendant had been informed by the Bureau of Prisons that Plaintiff was not a native-English speaker, and that he would require the assistance of a Korean translator at his deposition. Accordingly, Counsel for the Defendant arranged for a Korean translator to be present for the September 14, 2005 deposition.

3. On September 13, 2005, Counsel for the Defendant traveled to FCI McKean for the purpose of taking Plaintiff's deposition the following day, with the assistance of a Korean translator.

While at FCI McKean on September 13, 2005 Counsel for the Defendant learned, for the first time, that Plaintiff speaks Mandarin Chinese, as opposed to Korean.

4. In order to confirm that Plaintiff's native language is Mandarin Chinese, and not Korean, Counsel for the Defendant met with Plaintiff in person on the morning of September 14, 2005, for approximately ten minutes. Joyce Horikawa, agency counsel for the Bureau of Prisons, was also present for this meeting. During the meeting, Plaintiff confirmed that his native language is Mandarin Chinese, that he did not wish to proceed with a deposition in English, and that he would like a Mandarin interpreter to be present for the deposition.

5. Counsel for the Defendant indicated to Plaintiff that she would promptly seek leave of court to reschedule the deposition, and would also retain a Mandarin translator to attend the deposition. Plaintiff indicated that he was in agreement with this course of action.

6. Counsel for the Defendant has now obtained a Mandarin translator who is available to assist with the deposition, and hereby requests leave of court to take the Plaintiff's deposition upon oral examination at FCI McKean, Bradford, Pennsylvania on October 13, 2005.

7. Because discovery is scheduled to close on September 26, 2005, Defendant is simultaneously filing a Motion for Extension of Time to Complete Discovery.

8. Rule 30 provides that "a party must obtain leave of Court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if the person to be examined is confined in prison." None of the discovery limitations set forth in Rule 26(b)(2) apply to this case, namely, (1) the discovery sought is not unreasonably cumulative or duplicative and, (2) the burden or the expense of the proposed discovery does not outweigh its likely benefit taking into account the

needs of the case, the amount in controversy, the party's resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

9. For these reasons, the undersigned respectfully requests that the Court grant leave to take the deposition of Plaintiff by oral examination, on October 13, 2005.

WHEREFORE, Defendant respectfully requests that the Amended Motion for Leave to Depose be granted.

A proposed Order is attached.

Respectfully submitted,

MARY BETH BUCHANAN
United States Attorney

\s\ Christy Criswell Wiegand
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Amended Motion for Leave to Depose** was duly served, this date, either electronically or by U.S. Mail, first class, postage prepaid, to and upon the following:

Chen Chong Shu
Reg. No. 48744-054
FCI McKean
P.O. Box 8000
Bradford, PA 16701

\s\ Christy Criswell Wiegand
CHRISTY CRISWELL WIEGAND

Dated: September 19, 2005